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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

GASPAR GONGORA-GONGORA,
aka Gaspar Gongora,
aka Gaspar Pacheco,

Defendant.

No. 3-05-70912 EMC

~~[PROPOSED]~~ ORDER AND
STIPULATION EXCLUDING TIME
UNDER THE SPEEDY TRIAL ACT

The parties stipulate and agree, and the Court finds and holds, as follows:

1. The parties initially appeared on the instant matter November 2, 2005 for defendant's initial appearance on the complaint, and thereafter appeared on November 7, 2005 for defendant's detention hearing. On November 7, 2005, the matter was continued until November 17, 2005.

2. On November 17, 2005, the parties appeared in front of the Honorable Nandor J. Vadas, and the matter was continued until November 29, 2005 for arraignment/preliminary hearing.

3. On November 17, 2005, Assistant Public Defender David W. Fermino, who represents the defendant, requested an exclusion of time from November 17, 2005 to November 29, 2005, based on effective preparation of counsel. The defendant agreed to an extension of time for the preliminary hearing under Federal Rule of Criminal Procedure 5.1(d) and an exclusion of time under the Speedy Trial Act. The parties are involved in discussions which appear likely to lead to pre-indictment resolution of this case. Therefore, the parties are requesting an extension of time under Rule 5.1(d) and an exclusion of time under the Speedy Trial Act. The parties agree that the time from November 17, 2005 to November 29, 2005 should be extended under Rule 5.1(d) and excluded in computing the time within which an information or indictment must be filed. See 18 U.S.C. § 3161(h)(8)(A) and (B)(iv).

4. In light of the foregoing facts, the failure to grant the requested exclusion would unreasonably deny counsel for the defense the reasonable time necessary for effective preparation, taking into account the exercise of due diligence. See id. The ends of justice would be served by the Court excluding the proposed time period. These ends outweigh the best interest of the public and the defendant in a speedy trial. See id. § 3161(h)(8)(A).

5. For the reasons stated, the time period from November 17, 2005 through November 29, 2005 is extended under Rule 5.1(d) and excluded from the calculation of time under the Speedy Trial Act, 18 U.S.C. § 3161(h)(8)(A).

IT IS SO STIPULATED.

DATED: _____

Respectfully Submitted,

_____/S/
NAHLA RAJAN
Special Assistant United States Attorney

DATED: _____

_____/S/
DAVID W. FERMINO
Counsel for Gaspar Gongora-Gongora

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.
2

3 DATED: 11/29/05
4


HONORABLE NANDOR J. VADAS
United States Magistrate Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she caused a copy of:

[PROPOSED] ORDER AND STIPULATION EXCLUDING TIME UNDER THE SPEEDY TRIAL ACT

to be served this date on the party(ies) in this action,

Via Hand Delivery

DAVID W. FERMINO
Assistant Federal Public Defender
450 Golden Gate Avenue, 19th Floor
San Francisco, CA 94102

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: November 29, 2005

_____/S/
Ponly J. Tu
Legal Assistant (Immigration)
U.S. Attorney's Office